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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Butte)

THE PEOPLE,

Plaintiff and Respondent,

v.

BRANDON RAY AZOFEIFA,

Defendant and Appellant.

C085370

(Super. Ct. No. 17CF00350)

After demanding to see his girlfriend's phone because he thought she was cheating on him, defendant Brandon Ray Azofeifa choked and beat her. He pleaded no contest to felony domestic violence (Pen. Code, § 273.5, subd. (a)), and was placed on formal probation.¹ The court ordered defendant, over his objection, to pay nearly \$400 to the California Victim Compensation Board for a home security device the victim had

¹ Further undesignated statutory references are to the Penal Code.

purchased after the physical assault. Defendant timely appealed, challenging the propriety of that restitution order.

Defendant contends the restitution order for security related expenses was unauthorized. Citing section 1202.4, subdivision (f)(3)(J), defendant argues that restitution for such expenses is only authorized for violent felony convictions. We conclude the restitution order for security expenses was proper under section 1202.4, subdivision (f)(4)(A). We therefore affirm.

I. BACKGROUND

In January 2017, defendant and G.N. were dating.² He believed she was cheating on him and demanded to see her phone while he was visiting her apartment. G.N. gave him her phone, and defendant refused to return it upon her request. When she reached to grab her phone back, defendant pushed G.N. to the ground, straddled her, and began strangling her with both hands. G.N. could not breathe and grabbed defendant's shirt collar and necklace, breaking the chain; this enraged defendant. Defendant threatened to kill her and grabbed and broke the necklace she was wearing. He whipped her with one of the broken necklaces multiple times. He later pinned G.N. to the couch, straddled her, and threatened to bite her face to maim her and tried to gouge her eyes with his fingers.

Defendant was arrested and charged with one count of inflicting a corporal injury on a person with whom he had a dating relationship. (§ 273.5, subd. (a).) In May 2017, defendant pleaded no contest to the charge with the condition that he would not be immediately sentenced to prison. The court granted defendant three years formal probation and ordered defendant to serve 180 days in county jail as a condition of probation.

² The factual background is based on the probation report, which the parties stipulated to as the factual basis for defendant's plea.

Over defendant's objection, the court ordered him to pay \$393.56 to the California Victim Compensation Board, which had reimbursed G.N. for a home security device that she purchased as a result of the domestic violence assault. His counsel argued, and the probation officer agreed, that expenses for security devices were permitted only where a defendant was convicted of a violent felony. The court nevertheless ordered the restitution. Defendant timely appealed.

II. DISCUSSION

Defendant's sole contention on appeal is that section 1202.4, subdivision (f)(3)(J) limits restitution for residential security systems to defendants convicted of violent felonies. As it is undisputed that he was not convicted of a violent felony (§ 667.5, subd. (c)), defendant argues that the trial court erred when it included the security system costs within the restitution order.

The People argue that even if subdivision (f)(3)(J) of section 1202.4 does not apply, the court's order was proper under subdivision (f)(4)(A). We agree with the People. (*People ex rel. Gall v. Acuna* (1997) 14 Cal.4th 1090, 1119, fn. 4. ["A reviewing court will uphold a judgment if it is correct for any reason ' 'regardless of the correctness of [its] grounds" [Citation.] "It is judicial action and not judicial reasoning which is the subject of review" ' '"].) We need not decide, then, whether section 1202.4, subdivision (f)(3)(J) authorizes restitution for residential security systems for nonviolent felonies. (Compare *People v. Salas* (2017) 9 Cal.App.5th 736, 740 ["section 1202.4[, subdivision](f)(3)(J)'s explicit limitation to violent felonies authorizes restitution for residential security expenses only when those expenses are incurred related to a violent felony as defined by section 667.5, subdivision (c)"] with *People v. Henderson* (2018) 20 Cal.App.5th 467, 470 [section 1202.4, subdivision (f)(3)(J) does not limit discretionary restitution for residential security systems to violent felony convictions; restitution order that encompassed the victims' expenses for purchasing and installing a home security system after a nonviolent felony was proper].)

Where “ ‘the propriety of a restitution order turns on the interpretation of a statute, a question of law is raised, which is subject to de novo review on appeal.’ ” (*Henderson, supra*, 20 Cal.App.5th at p. 470.)

In 2017, when defendant committed his crime, pleaded no contest, and was sentenced to probation, subdivision (f) of section 1202.4 provided, with certain exceptions not applicable here, that “in every case in which a victim has suffered economic loss as a result of the defendant’s conduct, the court shall require that the defendant make restitution to the victim or victims in an amount established by court order, based on the amount of loss claimed by the victim or victims or any other showing to the court.” (Stats. 2016, ch. 37, § 3, eff. Jan. 1, 2017.)

Subdivision (f)(4)(A) of section 1202.4 stated: “If, as a result of the defendant’s conduct, the Restitution Fund has provided assistance to or on behalf of a victim or derivative victim pursuant to Chapter 5 (commencing with Section 13950) of Part 4 of Division 3 of Title 2 of the Government Code, the amount of assistance provided shall be presumed to be a direct result of the defendant’s criminal conduct and shall be included in the amount of the restitution ordered.” Persons who are eligible to receive assistance from the Restitution Fund include “[a] victim” such as G.N. (Gov. Code, § 13955, subd. (a)(1).)

Under Government Code section 13957, subdivision (a)(5), “The [California Victim Compensation Board] may grant for pecuniary loss, when the board determines it will best aid the person seeking compensation, as follows: [¶] . . . [¶] (5) Reimburse the expense of installing or increasing residential security, not to exceed one thousand (\$1,000). Installing or increasing residential security may include, but need not be limited to, both of the following: [¶] (A) Home security device or system. [¶] (B) Replacing or increasing the number of locks.” The provision does not differentiate between violent and nonviolent felonies. (*Ibid.*)

Thus, where a victim incurs the economic loss of installing a security system as a direct result of a defendant's criminal conduct, and the Restitution Fund has provided assistance to the victim to purchase the security system, section 1202.4, subdivision (f)(4)(A) mandates that the trial court include the amount in the restitution ordered. That is what occurred here.

The record shows that G.N., the victim, ordered and paid for home security devices. The total cost for the security equipment was \$393.56. The Victim Compensation Board compensated her for the cost of the security equipment. Given the evidence presented, the trial court was required to include the amount in the restitution order, and did so. (§ 1202.4, subd. (f)(4)(A).) The restitution order was therefore proper.

III. DISPOSITION

The judgment is affirmed.

/S/

RENNER, J.

We concur:

/S/

BLEASE, Acting P. J.

/S/

HULL, J.